

REMARKS

Upon entry of the foregoing amendment, claims 1-70, 72, and 74-87 are pending for the Examiner's consideration, with claims 1, 72, 82, and 85 being the independent claims. Claims 71 and 73 are canceled herein, without prejudice to or disclaimer of the subject matter contained therein. New claims 74-87 are added. Claims 1, 14, 56, and 72 are amended herein. Applicant respectfully submits that these amendments introduce no new matter. The Examiner is referred to in this regard, for example, page 32, lines 12-16, page 50, lines 13-15, and page 59, line 18 through page 61, line 21, as well as Figures 14A and 14B, of the application as originally filed.

Priority

The Examiner asserts in paragraph 1 of the outstanding Office Action that Applicant has not complied with a condition for receiving the benefit of an earlier filing date under 35 U.S.C. § 120 because the specific reference to any prior nonprovisional application must include the relationship between the applications. Applicant respectfully submits that all requirements of 35 U.S.C. § 120 have been satisfied. In particular, an Application Data Sheet (ADS) was filed with the above-captioned application, as evidenced by the attached copy of the date-stamped postcard evidencing receipt of the same by the U.S. Patent and Trademark Office on September 16, 2003. A copy of the ADS filed on September 16, 2003 is also attached. The ADS identifies the relationship, application number, and filing date of the prior nonprovisional applications for which domestic priority is claimed. In accordance with 37 C.F.R. § 1.76(b)(5), providing this information in the ADS constitutes the specific reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a). Therefore, Applicant respectfully submits that the ADS filed on September 16, 2003 fully satisfies the requirements for priority.

Double Patenting

The Examiner has rejected claims 1-73 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-138 of U.S. Patent No. 6,402,435 ("the '435 patent"). Filed herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a Prior Patent executed by the assignee of the above-captioned

application for the '435 patent ("Disclaimer"). A Statement Under 37 C.F.R. § 3.73(b) establishing the right to act on behalf of the assignee with regard to the above-captioned application is also filed herewith. The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991). The filing of a terminal disclaimer serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection. *Id.*; M.P.E.P. § 804.02. Based upon filing of the Disclaimer and accompanying fee, Applicant respectfully submits that the obviousness-type double patenting rejection should be withdrawn.

Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 1, 2, 4-7, 10, 11, 15-17, 19-23, 36-40, 43-48, 52-55, 59, 60, and 71-73 under 35 U.S.C. § 102(b) as being anticipated by Japanese patent document #61-60929 ("JP '929"). Independent claims 1 and 72 have been amended herein, thereby rendering this rejection moot. Applicant respectfully submits that this rejection cannot properly be maintained with respect to the claims as presented herein.

Independent claims 1, 72, 82, and 85 as presented herein recite that the header units are stacked in a complementary relationship to provide mechanical interlocking between the adjacent header units. Moreover, each of independent claims 1, 72, 82, and 85 requires that one of the header units is in a complementary relationship with a base to provide mechanical interlocking with the base. JP '929 discloses a means for strengthening a vertical wall made from concrete blocks by inserting a steel wire into a hole within the concrete blocks. The concrete blocks are piled on top of each other. The concrete blocks are not configured to provide mechanical interlocking between adjacent concrete blocks. Furthermore, the PC sheet (6) shown in JP '929 is not in a complementary relationship with the concrete block at the bottom of the pile. For at least the foregoing reasons, Applicant respectfully submits that JP '929 does not disclose or suggest the subject matter of independent claims 1, 72, 82, and 85 as presented herein, or the more narrow claims depending therefrom. As such, this rejection cannot properly be maintained.

The Examiner has rejected claims 1-7, 10, 11, 15, 16, 19-23, 31, 36-40, 43-48, 72, and 73 under 35 U.S.C. § 102(b) as being anticipated by AT #296,367 (“AT ‘367”).

Independent claims 1 and 72 have been amended herein, thereby rendering this rejection moot. Applicant respectfully submits that this rejection cannot properly be maintained with respect to the claims as presented herein.

Independent claims 1, 72, 82, and 85 as presented herein recite that the header units are stacked in a complementary relationship to provide mechanical interlocking between the adjacent header units. Moreover, each of independent claims 1, 72, 82, and 85 requires that one of the header units is in a complementary relationship with a base to provide mechanical interlocking with the base. AT ‘367 discloses a retaining and revetment wall comprising binder elements (1) that are connected together by means of plank-like structure elements (2). The basis of the invention is the use of steel additions (3) to improve the chances that the various components of the gravity wall will remain in close proximity with each other in an attempt to maintain the overall intended spatial arrangement of the components. The binder elements (1) are not in contact with each other, as is clear from figures 3, 5, 6, 7, and from the side views of figures 1, 8, and 9 of AT ‘367. There are definitive gaps and spaces between adjacent binder elements (1). They cannot be stacked in a complementary relationship to provide mechanical interlocking between adjacent binder elements. Moreover, AT ‘367 does not disclose a binder element that is in a complementary relationship with a base that provides mechanical interlocking between the binder element and the base. It is the steel additions (3) that connect the floor (16) and the ground anchor (18), for example as shown in figure 9 of AT ‘367. The steel additions (3) do not afford any effective lateral restraint. For at least the foregoing reasons, Applicant respectfully submits that AT ‘367 does not disclose or suggest the subject matter of independent claims 1, 72, 82, and 85 as presented herein, or the more narrow claims depending therefrom. As such, this rejection cannot properly be maintained.

The Examiner has rejected claims 1-7, 72, and 73 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,726,567 to Greenberg (“the ‘567 patent”). Independent claims 1 and 72 have been amended herein, thereby rendering this rejection moot. Applicant respectfully submits that this rejection cannot properly be maintained with respect to the claims as presented herein.

Independent claims 1, 72, 82, and 85 as presented herein require that one of the header units is in a complementary relationship with a base to provide mechanical interlocking with the base. The '567 patent does not disclose or suggest having one of the header units in a complementary relationship with a base to provide mechanical interlocking with the base, as required by independent claims 1, 72, 82, and 85 as presented herein. As shown, for example, in Figures 1 and 2 of the '567 patent, course 12 is not in a complementary relationship with footer 20 that provides mechanical interlocking between course 12 and footer 20. For at least the foregoing reason, Applicant respectfully submits that the '567 patent does not disclose or suggest the subject matter of independent claims 1, 72, 82, and 85 as presented herein, or the more narrow claims depending therefrom. As such, this rejection cannot properly be maintained.

Moreover, independent claims 82 and 85 as presented herein require that the header units be stacked in a complementary relationship to provide mechanical interlocking between adjacent faces of adjacent header units, with the adjacent faces being perpendicular to a longitudinal axis of at least one of the adjacent header units, which is not disclosed in or suggested by the '567 patent. The '567 patent discloses a masonry fence that comprises a plurality of courses of masonry blocks mounted on a footer. The horizontal joints between adjacent courses is provided with a mortared joint, or a binder such as an epoxy or similar binding agent. As shown in figure 5 and explained in column 4 of the '567 patent, the blocks that are in space 61 do not experience post-tensioning and must rely upon the other features of the masonry fence, including the horizontal mortar joints, to maintain structural integrity. The '567 patent does not disclose or suggest the use of header units stacked in a complementary relationship to provide mechanical interlocking between adjacent faces of adjacent header units, with the adjacent faces being perpendicular to a longitudinal axis of at least one of the adjacent header units. The vertical joints between adjacent blocks of the masonry fence of the '567 patent are interlocking blocks, but, as can be seen from Figures 1 and 4 of the '567 patent, such vertical joints do not provide mechanical interlocking between adjacent faces that are perpendicular to the longitudinal axis of at least one of the adjacent concrete blocks.

Rejection Under 35 U.S.C. § 103

The Examiner has rejected claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over JP '929 and AT '367 in view of U.S. Patent No. 5,178,492. Independent claim 1 from which these claims depend has been amended herein, thereby rendering moot this rejection. Applicants respectfully submit that this rejection cannot properly be maintained for the claims as presented herein for at least the reasons discussed above for the rejections under 35 U.S.C. § 102 based upon JP '929 and AT '367. For the sake of brevity, these arguments are not repeated here, and included in this section by reference.

Conclusion


All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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